



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 26]

नई दिल्ली, बुधवार, नवम्बर 25, 2009/अग्रहायण 4, 1931

No. 26] NEW DELHI, WEDNESDAY, NOVEMBER 25, 2009 / AGRAHAYANA 4, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 25th November, 2009:—

BILL NO. XLVII OF 2009

A Bill further to amend the Foreign Trade (Development and Regulation) Act, 1992.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Foreign Trade (Development and Regulation) Amendment Act, 2009.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment
of section 2.

2. In section 2 of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the principal Act).—

22 of 1992.

(a) for clause (e), the following shall be substituted, namely:—

‘(e) “import” and “export” means,—

(I) in relation to goods, bringing into, or taking out of, India any goods by land, sea or air;

(II) in relation to services or technology,—

(i) supplying, services or technology—

(A) from the territory of another country into the territory of India.

(B) in the territory of another country to an Indian service consumer;

(C) by a service supplier of another country, through commercial presence in India;

(D) by a service supplier of another country, through presence of their natural persons in India;

(ii) supplying, services or technology—

(A) from India into the territory of any other country;

(B) in India to the service consumer of any other country;

(C) by a service supplier of India, through commercial presence in the territory of any other country;

(D) by a service supplier of India, through presence of Indian natural persons in the territory of any other country;

Provided that “import” and “export” in relation to the goods, services and technology regarding Special Economic Zone or between two Special Economic Zones shall be governed in accordance with the provisions contained in the Special Economic Zones Act, 2005.’;

28 of 2005.

(b) in clause (g), after the word “permission”, the words “certificate, scrip or any other instrument bestowing financial or fiscal benefits” shall be inserted;

(c) after clause (i), the following clauses shall be inserted, namely:—

‘(j) “services” means service of any description which is made available to potential users and includes all the tradable services specified under the General Agreement on Trade in Services entered into amongst India and other countries who are party to the said Agreement;

Provided that, this definition shall not apply to the domain of taxation;

(k) “service supplier” means any person who supplies a service and who intends to take benefit under the foreign trade policy;

(l) “specified goods or services or technology” means the goods or services or technology, the export, import, transfer, re-transfer, transit and transshipment of which is prohibited or restricted or in respect of which conditions have been imposed on grounds of their being pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, covenant, convention or arrangement relating to weapons

of mass destruction or their means of delivery to which India is a party or its agreement with a foreign country under the foreign trade policy formulated and notified under section 5 of the Act;

(m) "technology" means any information (including information embodied in software), other than information in the public domain, that is capable of being used in—

(i) the development, production or use of any goods or software;

(ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of service of any kind.

Explanation.— For the purpose of this clause—

(a) when technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used in the development, production or use of such technology or goods;

(b) "public domain" shall have the same meaning as assigned to it in clause (i) of section 4 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

21 of 2005.

3. In section 3 of the principal Act,—

Amendment
of section 3.

(a) in sub-section (2), for the words "import or export of goods", the words "import or export of goods or services or technology" shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4). Notwithstanding anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods or provision for services or technology, nor any goods or provision for services or technology shall be prohibited for import or export except, as may be required under this Act or rules or orders made thereunder:

Provided that the Central Government may, having regard to the foreign trade policy by order, exempt any service or class of services from the purview of this sub-section."

4. In section 5 of the principal Act,—

Amendment
of section 5.

(a) for the words "export and import policy", the words "foreign trade policy" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations as may be specified by it by notification in the Official Gazette."

5. In section 6 of the principal Act, in sub-section (2), for the words "export and import policy", the words "foreign trade policy" shall be substituted.

Amendment
of section 6.

6. In section 7 of the principal Act, the following proviso shall be inserted, namely:—

Amendment
of section 7.

"Provided that in case of import and export of services, the Importer-exporter Code Number shall be necessary only when the service provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies."

amendment
of section 8.

7. In section 8 of the principal Act,—

(A) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where—

(a) any person has contravened any of the provisions of this Act or any rules or orders made thereunder or the foreign trade policy relating to Central excise or customs or foreign exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette; or

(b) the Director General or any other officer authorised by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of, or services or technology provided from, the country; or

(c) any person who imports or exports specified goods or services or technology, in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy,

the Director General or any other officer authorised by him may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for a period, as may be specified in the order, or cancel the Importer-exporter Code Number granted to that person.”;

(B) in sub-section (2), for the words “import or export of any goods”, the words “import or export of any goods or services or technology” shall be substituted.

amendment
of section 9.

8. In section 9 of the principal Act, in sub-section (2), for the words “class or classes of goods”, the words “class or classes of goods or services or technology” shall be substituted.

insertion of
new Chapter
II A.

9. After Chapter III of the principal Act, the following Chapter A shall be inserted, namely:—

‘CHAPTER IIIA

QUANTITATIVE RESTRICTIONS

power of
Central
Government
to impose
quantitative
restrictions.

9A. (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such articles as it may deem fit:

Provided that no such quantitative restrictions shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent. or where that article originates from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent. of the total imports of that article into India.

(2) The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years:

Provided further that in no case the quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

(3) The Central Government may, by rules provide for the manner in which articles, the import of which shall be subject to quantitative restrictions under this section, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined.

(4) For the purposes of this section—

(a) “developing country” means a country notified by the Central Government in the Official Gazette, in this regard;

(b) “domestic industry” means the producers—

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like articles or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;

(d) “threat of serious injury” means a clear and imminent danger of serious injury;.

10. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment
of section 10.

“(1) The Central Government may, by notification in the Official Gazette, authorise any person for the purposes of exercising such powers with respect to,—

(a) entering such premises where the goods are kept, stored or processed, manufactured, traded or supplied or received for the purposes of import or export and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of goods;

(b) entering such premises from which the services or technology are being provided, supplied, received, consumed or utilised and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of services and technology,

subject to such requirements and conditions, as may be prescribed.”.

11. In section 11 of the principal Act,—

Amendment
of section 11.

(a) in sub-section (1), for the words “export and import policy”, the words “foreign trade policy” shall be substituted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less

than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.

(2A) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or not more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.”;

(c) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) A penalty imposed under this Act may, if it is not paid by any person, be recovered by any one or more of the following modes, namely:—

(a) the Director General may deduct or require any officer subordinate to him to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer; or

(b) the Director General may require any officer of customs to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer of customs, as if the said amount is payable under the Customs Act, 1962; or

52 of 1962.

(c) the Director General may require the Assistant Commissioner of Customs or Deputy Commissioner of Customs or any other officer of Customs to recover the amount so payable by detaining or selling any goods (including the goods connected with services or technology) belonging to such person which are under the control of the Assistant Commissioner of Customs or Deputy Commissioner of Customs or any other officer of Customs, as if the said amount is payable under the Customs Act, 1962; or

52 of 1962.

(d) if the amount cannot be recovered from such person in the manner provided in clauses (a), (b) and (c)—

(i) the Director General or any officer authorised by him may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue; or

(ii) the Director General or any officer authorised by him (including an officer of Customs who shall then exercise his powers under the Customs Act, 1962) and in accordance with the rules made in this behalf, detain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid, as if the said amount is payable under the Customs Act, 1962; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and costs including cost of sale remaining unpaid and shall render the surplus, if any to such person.

52 of 1962.

(4A) Where the terms of any bond or other instrument executed under this Act or any rules made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (4), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(4B) Without prejudice to the provisions contained in this section, the Importer-exporter Code Number of any person who fails to pay any penalty imposed under this Act, may be suspended by the Adjudicating Authority till the penalty is paid or recovered, as the case may be.”.

(d) in sub-section (5), for the words “the goods”, the words and brackets “the goods (including the goods connected with services or technology)” shall be substituted;

(e) in sub-section (6), for the words “the goods”, the words and brackets “the goods (including the goods connected with services or technology)” shall be substituted.

12. After section 11 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 11A and 11B.

“11A. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Crediting sums realised by way of penalties in Consolidated Fund of India.

11B. Settlement of customs duty and interest thereon as ordered by the Settlement Commission as constituted under section 32 of the Central Excise Act, 1944, shall be deemed to be a settlement under this Act.”.

Empowering Settlement Commission for regularisation of E.O. default.

13. In section 14 of the principal Act, for the word “goods” at both the places where it occurs, the words and brackets “the goods (including the goods connected with services or technology)” shall be substituted.

Amendment of section 14.

14. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter IVA.

“CHAPTER IVA

CONTROLS ON EXPORT OF SPECIFIED GOODS, SERVICES AND TECHNOLOGY

14A. (1) In regard to controls on export of specified goods, services and technology referred to in this Chapter, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in specified goods, technology or services.

Controls on export of specified goods, services and technology.

(2) All terms, expressions or provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 shall apply to the specified goods, services or technology with such exceptions, modifications and adaptations as may be specified by the Central Government by notification in the Official Gazette.

(3) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Chapter—

(a) shall not apply to any goods, services or technologies, or

1 of 1944.

21 of 2005.

21 of 2005.

(b) shall apply to any goods, services or technologies with such exceptions, modifications and adaptations as may be specified in the notification.

transfer
controls.

14B. (1) The Central Government may, by notification in the Official Gazette, make rules in conformity with the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 for, or, in connection with, the imposition of controls in relation to transfer of specified goods, services or technology. 21 of 2005.

(2) No goods, services or technology notified under this Chapter shall be exported, transferred, re-transferred, brought in transit or transshipped except in accordance with the provisions of this Act, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 or any other relevant Act. 21 of 2005.

Catch-all
controls.

14C. No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

suspension of
cancellation
of a licence.

14D. The Director General or an officer authorised by him may, by order, suspend or cancel a licence to import or export or specified goods or services or technology without giving the holder of the licence a reasonable opportunity of being heard but such person shall be given a reasonable opportunity of being heard within six months of such order and thereupon the Director General or the officer so authorised may, if necessary, by order in writing, confirm, modify or revoke such order.

Offences and
penalties.

14E. (1) In case of a contravention relating to specified goods, services or technologies, the penalty shall be in accordance with the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. 21 of 2005.

(2) Where any person contravenes or attempts to contravene or abets, any of the provisions of this Chapter in relation to import or export of any specified goods or services or technology, he shall, without prejudice to any penalty which may be imposed on him, be punishable with imprisonment for a term stipulated in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. 21 of 2005.

(3) No court shall take cognizance of any offence punishable under this Chapter without the previous sanction of the Central Government or any officer authorised in this behalf by the Central Government by general or special order."

Amendment
of title of
Chapter V.

15. In the principal Act, in the title of CHAPTER V. for the word "REVISION", the word "REVIEW" shall be substituted.

Amendment
of section 15.

16. In section 15 of the principal Act, in sub-section (2), in the proviso, for the words "goods", the words and brackets "the goods (including the goods connected with services or technology)" shall be substituted.

Substitution of
new section
for section 16.

17. For section 16 of the principal Act, the following shall be substituted, namely:—

Review.

"16. The Central Government, in the case of any decision or order made by the Director General, or the Director General in the case of any decision or order made by any officer subordinate to him, may on its or his own motion or otherwise, call for and examine the records of any proceeding, for the purpose of satisfying itself or himself, as the case may be, as to the correctness, legality or propriety of such decision or order and make such orders thereon as may be deemed fit:

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person—

(a) has, within a period of two years from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied; and

(b) has been given a reasonable opportunity of making representation and, if he so desires, of being heard in his defence.”

18. In section 17 of the principal Act, for the word “Revision” wherever it occurs, the word “Review” shall be substituted.

Amendment of section 17.

19. After section 18 of the principal Act, the following shall be inserted, namely:—

Insertion of new section 18A.

“18A. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

Application of other laws not barred.

20. In section 19 of the principal Act, in sub-section (2), —

Amendment of section 19.

(a) in clauses (c), (f), (h) and (i), for the words “goods” wherever it occurs, the words and brackets “the goods (including the goods connected with services or technology)” shall respectively be substituted;

(b) after clause (e), the following clause shall be inserted, namely:—

“(ea) the manner in which articles, the import of which shall be subject to quantitative restriction, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined under sub-section (3) of section 9A;”.

STATEMENT OF OBJECTS AND REASONS

The Foreign Trade (Development and Regulation) Act, 1992 was enacted to provide for the development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected therewith or incidental thereto.

2. Since the enactment of the Foreign Trade (Development and Regulation) Act, 1992, certain requirements have arisen necessitating amendments to the said Act. These include providing a statutory provision for safeguard measures enabling imposition of Quantitative Restrictions (QRs); bringing in tighter export or trade control in the case of dual-use goods and related technologies and providing enabling provisions for establishing controls as in the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005; bringing "technology" and "services", including financial services, within the ambit of the Act for the purpose of administering incentive schemes and other provisions of the Foreign Trade Policy; dispensing with the requirement of obtaining any licence or permit for import or export except as may be provided under the Act; enabling swift and exemplary action in trade dispute matters; further rationalisation as well as improvement of the system of levying and realising fiscal penalties; empowering Customs and Central Excise Settlement Commission for settlement of customs and excise duty and interest dues; broadening the scope of word "licence" defined in the Act; providing a provision for review of all decisions of subordinate officers by Director General of Foreign Trade.

3. The proposed amendments would enable the Government to impose quantitative restrictions as a safeguard measure to provide the domestic industry a level playing field, in case a surge in imports leads to, or threatens to seriously injure domestic industry; rationalise the system of penalty leviable under the Act making it more equitable; enable stricter regulation of export in technology, especially relating to dual-use items, which is necessary to instill a sense of confidence among the technology providers and to ensure that trade in sensitive technologies including dual-use technologies is appropriately regulated; ensure conformity with the provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. The provision of notifying all restrictions on imports and exports through the Foreign Trade Policy would ensure that all such information is available at one place therefore ensuring conformity with India's commitments to WTO. The power of review would ensure transparency and public accountability in the system. The amendments would also ensure that trade in sensitive technologies is regulated, additional modes for recovery of penalty are available and India's growing trade in services is facilitated.

4. The Bill seeks to achieve these objectives.

ANAND SHARMA.

FINANCIAL MEMORANDUM

The proposed amendments to the Foreign Trade (Development and Regulation) Act, 1992 are regulatory in nature and do not have any financial implications. The additional work relating to imposition of quantitative restrictions as a safeguard measure will be managed by the Directorate General of Foreign Trade within its existing strength and regular budget.

2. The provisions of the Bill do not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill seeks to insert a new Chapter IIIA relating to imposition of quantitative restrictions to the Foreign Trade (Development and Regulation) Act, 1992. The new section 9A empowers the Central Government to impose quantitative restrictions on the import of increased quantities of articles into India. The said section also empowers the Central Government by rules to provide the manner in which articles, the import of which shall be subject to quantitative restrictions.

2. Clause 10 of the Bill seeks to amend sub-section (1) of section 10 to empower the Central Government, by notification in the Official Gazette, authorise any person for the purpose of exercising such powers with respect to—

(a) entering such premises where the goods are kept, stored or processed, manufactured, traded or supplied or received for the purposes of import or export and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of goods;

(b) entering such premises from which the services or technology are being provided, supplied, received, consumed or utilised and searching, inspecting and seizing of such goods, documents, things and conveyances connected with such import and export of services and technology; subject to such requirements and conditions, as may be prescribed.

3. Clause 14 of the Bill seeks to insert a new Chapter IVA relating to application of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. The new section 14A empowers the Central Government to specify by notification the application of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 to the specified goods, services or technology with such exceptions, modifications and adaptations. The new section 14B empowers the Central Government to make rules in conformity with the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 for, or, in connection with, the imposition of controls in relation to transfer of specified goods, services or technology.

4. The matters in respect of which notifications may be issued or rules may be made are essentially matters of administrative detail and procedure and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

V. K. AGNIHOTRI,
Secretary-General.